

RESOLUTION NO. 2014330

RE: REQUESTING HOME RULE LEGISLATION IN THE NEW YORK STATE
LEGISLATURE TO REPEAL THE TEMPORARY STATE ENERGY &
UTILITY SERVICE CONSERVATION ASSESSMENT

Legislators BORCHERT, FLESLAND, BOLNER, KELSEY, SURMAN, ROMAN,
INCORONATO, WEISS, JOHNSON, and MacAVERY offer the following and move its adoption:

WHEREAS, Section 18-a of the New York Public Service Law authorizes the
State to impose a 2% fee on electric bills from public utilities to fund the operations of energy-
related agencies and authorities; and

WHEREAS, in 2009 when this assessment was imposed, it was proposed as a
temporary assessment, and was scheduled to sunset in March of 2014; and

WHEREAS, this assessment will not sunset in 2014 because an extension has
been adopted by the New York State Legislature as part of the 2014-15 state budget and the
earliest sunset will now be in 2017; and

WHEREAS, extending the assessment will cost energy consumers, such as
businesses, governments, schools, non-profits and residents of New York State hundreds of
millions of dollars over the next three years; and

WHEREAS, the people of Dutchess County and of this state cannot afford to
endure the burden of this tax any longer, now, therefore be it

RESOLVED, that Dutchess County hereby requests the New York State
Legislature and Governor adopt legislation which will repeal the Temporary State Energy &
Utility Service Conservation Assessment, more commonly known as an 18-a tax, immediately,
and be it further

RESOLVED, that should the state be unwilling to repeal the Temporary State
Energy & Utility Service Conservation Assessment for the entire state that it at least should do so
for the County of Dutchess, and be it further

RESOLVED, that the Clerk of the Dutchess County Legislature forward a
certified copy of this resolution to Governor Andrew Cuomo, Senators Terry Gipson and Greg
Ball, Assembly Members Frank Skartados, Didi Barrett, Kevin Cahill, Kieran Lalor, and Steve
Katz requesting they introduce and adopt legislation which will repeal the Temporary State
Energy & Utility Service Conservation Assessment immediately.

CA-201-14 CEN/ca/G-1614 10/20/14

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution
with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 4th day of December 2014,
and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 4th day of December 2014.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

FISCAL IMPACT STATEMENT

☐ NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS

(To be completed by requesting department)

Total Current Year Cost \$ _____

Total Current Year Revenue \$ _____
and Source

Source of County Funds *(check one)*: ☐ Existing Appropriations, ☐ Contingency,
☐ Transfer of Existing Appropriations, ☐ Additional Appropriations, ☐ Other *(explain)*.

Identify Line Items(s):

Related Expenses: Amount \$ _____

Nature/Reason:

Anticipated Savings to County: \$32,000 _____

Net County Cost (this year): _____
Over Five Years: _____

Additional Comments/Explanation:

The 18-a tax is a state-mandated fee that the County pays on each electric bill at a total projected cost in 2015 of over \$32,000. Immediate repeal of the Temporary State Energy & Utility Service Conservation Assessment would produce a direct cost savings to the County as well as provide even greater relief to the people of Dutchess County.

Prepared by: Rachel Kashimer, Budget Office 10/22/14

McKinney's Consolidated Laws of New York Annotated
Public Service Law (Refs & Annos)
Chapter 48. Of the Consolidated Laws (Refs & Annos)
Article 1. The Department of Public Service (Refs & Annos)

McKinney's Public Service Law § 18-a

§ 18-a. Costs and expenses of the commission and department and the assessment of such costs and expenses

Effective: April 1, 2014
Currentness

1. All costs and expenses of the department and commission shall be paid pursuant to appropriation on the certification of the chairman of the department and upon the audit and warrant of the comptroller. The state treasury shall be reimbursed therefore¹ by payments to be made thereto from all moneys collected pursuant to this chapter. The total of such costs and expenses shall be borne by the public utility companies (including for the purposes of this section municipalities other than municipalities as defined in section eighty-nine-1 of this chapter), corporations (including the power authority of the state of New York), and persons subject to the commission's regulation, to be assessed in the manner provided in subdivisions two, three and four of this section and section two hundred seventeen of this chapter.

1-a. All costs and expenses of the department related to the department's responsibilities under section three-b of this chapter shall be paid pursuant to appropriation on the certification of the chairman of the department and upon the audit and warrant of the comptroller. For the state fiscal year beginning on April first, two thousand fourteen and each state fiscal year thereafter, payments are to be made from all moneys collected from the Long Island power authority pursuant to this section. The total of such costs and expenses shall be assessed on such authority in the manner provided in subdivisions two, three and four of this section.

2. (a) The chairman of the department shall estimate prior to the start of each state fiscal year the total costs and expenses, including the compensation and expenses of the commission and the department, their officers, agents and employees, and including the cost of retirement contributions, social security, health and dental insurance, survivor's benefits, workers' compensation, unemployment insurance and other fringe benefits required to be paid by the state for the personnel of the commission and the department, and including all other items of maintenance and operation expenses, and all other direct and indirect costs. Based on such estimates, the chairman shall determine the amount to be paid by each assessed public utility company and the Long Island power authority and a bill shall be rendered to each such public utility company and authority.

(b) The bill for each public utility company and the Long Island power authority shall be rendered on or before February first preceding each fiscal year, and shall be for the amount equal to the product of the aforesaid estimated costs and expenses of conducting the department's and commission's total operations during the fiscal year for which billing is being made multiplied by the proportion which compares:

(1) the gross operating revenues, over and above five hundred thousand dollars, for that utility company or the authority derived from intrastate utility operations in the last preceding calendar year, or other twelve month period as determined by the chairman, to:

(2) the total of the gross operating revenues, derived from intrastate utility operations for all utility companies and the authority in the state which revenues are included under subparagraph one of this paragraph.

For the purposes of calculating the commodity cost component of its gross operating revenue, where the utility delivers to end-use customers electricity and/or natural gas commodities that are sold to such customers by a third party, such utility shall include in its revenues an estimate of the sales revenue for the electric and/or natural gas commodities that it delivers, including all such commodities sold to end-use customers by third parties, in such manner as to assure that all end-use delivery customers, regardless of the entity from which they purchase their electric and/or natural gas commodities, bear a fair and proportionate share of the assessment imposed herein, as the commission may determine.

(c) The minimum assessment for any utility company, as well as the Long Island power authority, whose gross revenues from intrastate utility operations are in excess of five hundred thousand dollars in the preceding calendar year shall be two hundred dollars.

(d) The amount of such bill for fiscal years beginning on or after April first, nineteen hundred eighty-three so rendered shall be paid by such public utility company and such authority to the department on or before April first; provided, however, that any such utility company or such authority may elect to make partial payments for such costs and expenses on March tenth of the preceding fiscal year and on September tenth of such fiscal year. Each such partial payment shall be a sum equal to fifty percentum of the estimate of costs and expenses to be assessed against such utility company or authority under the provisions of this subdivision and shall not be less than two hundred dollars.

(e) During the course of any state fiscal year, the chairman may increase or decrease the estimate of costs and expenses. In such case, revised bills shall be sent to each public utility company and such authority, and such increase or decrease shall be equally apportioned against the remaining payments for such fiscal year.

(f) On or before October tenth of each year, the chairman shall compute the actual costs and expenses of the department and the commission and adjustments or other corrections as needed for the preceding state fiscal year and, after deducting the amounts recovered pursuant to subdivisions three and four of this section, shall, on or before October twentieth, send to each public utility company and/or the authority affected thereby a statement setting forth the amount due and payable by, or the amount standing to the credit of, such public utility company and/or the authority. Any amount owing by any public utility company and/or the authority shall be paid not later than thirty days following the date such statement is received. Any such amount standing to the credit of any public utility company shall be refunded by the commission or, at the option of such utility company, shall be applied as a credit against any succeeding payment due.

(g) The total amount which may be charged to any public utility company and the Long Island power authority under authority of this subdivision for any state fiscal year shall not exceed one per centum of such public utility company's or authority's gross operating revenues derived from intrastate utility operations in the last preceding calendar year, or other twelve month period as determined by the chairman; provided, however, that no corporation or person that is subject to the jurisdiction of the commission only with respect to safety, or the power authority of the state of New York, shall be subject to the general assessment provided for under this subdivision.

Notwithstanding the provisions of subdivision one of this section, for telephone corporations as defined in subdivision seventeen of section two of this article, the total amount which may be charged such corporations for department expenses under the authority of subdivision one of this section for any state fiscal year shall not exceed one-third of one percentum of such

corporation's gross operating revenue, over and above five hundred thousand dollars, derived from intrastate utility operations in the last preceding calendar year, or other twelve month period as determined by the chairman.

(h) On-bill recovery charges billed pursuant to section sixty-six-m of this chapter shall be excluded from any determination of an entity's gross operating revenues derived from intrastate utility operations for purposes of this section.

3. In the case of corporations or persons subject to the jurisdiction of the commission only with respect to safety, the chairman of the department shall ascertain from time to time, but not less than once in each fiscal year, all direct and indirect costs of investigating (a) the safety of the pipelines conveying gas at pressures in excess of one hundred twenty-five pounds per square inch gauge or conveying liquid petroleum products of such corporations or persons and (b) the safety of any gas plant of corporations manufacturing pipeline quality gas and subject to the safety jurisdiction of the commission by virtue of the proviso to exception (b) of subdivision eleven of section two of this chapter. The chairman shall for each investigation assess such costs against such corporations or persons whose pipelines or plants have been investigated. Bills for such an investigation may be rendered from time to time but not less than once in each fiscal year, and the amount of such bills shall be paid by the appropriate corporation or person to the department within thirty days from the date of rendition. The total amount which may be charged to any corporation or person for any state fiscal year as the cost of investigating the safety of pipelines shall not exceed one hundred dollars times the sum of the products obtained by multiplying the mileage (to the nearest tenth) of each section of any such pipeline in the state in use at the end of the preceding calendar year by its nominal diameter in feet (to the nearest tenth). The total amount which may be charged to any pipeline quality gas manufacturing company for any state fiscal year as the costs of investigating the safety of the plant of such company shall not exceed one-third of one per centum of the estimate of the average annual gross revenues from the sales of manufactured gas over a three-year period of operation or anticipated operation, as determined by the chairman, of such pipeline quality gas manufacturing company.

4. In the case of the power authority of the state of New York, the chairman of the department shall ascertain from time to time, but not less than once in each fiscal year, all direct and indirect costs of investigating requests by the power authority of the state of New York to establish new, major utility transmission facilities as defined in article seven of this chapter or to establish new, major steam electric generating facilities as defined in article eight of this chapter. The chairman shall for each such investigation assess such costs against the power authority of the state of New York. Bills for such an investigation may be rendered from time to time, but not less than once in each fiscal year, and the amount of such bills shall be paid by the power authority of the state of New York to the department within thirty days from the date of rendition.

4-a. In the case of research, development and demonstration of new energy technologies, the director of the budget may enter into contracts, subject to the availability of appropriations, with the New York state energy research and development authority for the costs of such research, development and demonstration beyond such amounts as may be available to the New York state energy research and development authority for such purposes from bonds, grants or other sources. On or before February first preceding each fiscal year, the chairman of the authority shall estimate and transmit to the chairman of the department of public service the total costs of authority research, development and demonstration projected to be authorized by contracts with the director of the budget for such fiscal year. The chairman of the department shall apportion the costs of such research, development and demonstration in accordance with the billing procedures of this section among gas corporations and electric corporations as defined in section two of this chapter. Such apportionment shall be excluded from the general assessment provided for under subdivision two of this section. The total amount which may be charged to any gas corporation and electric corporation for any state fiscal year shall be .6 cents per one thousand cubic feet for gas sold and .006 cents per kilowatt hour of electricity sold by such corporations in their intrastate utility operations the last preceding calendar year.

4-b. In the case of research, development and demonstration of new energy technologies, the director of the budget may enter into contracts, subject to the availability of appropriations, with the New York state energy research and development

authority for the costs of such research, development and demonstration beyond such amounts as may be available to the New York state energy research and development authority for such purposes from bonds, grants or other sources, including the power authority of the state of New York. Not later than November first preceding each fiscal year, the energy research and development authority and the power authority of the state of New York shall agree as to a specific level of financial support to be provided by the power authority of the state of New York for the energy research and development authority's energy research development and demonstration activities for such fiscal year. Such level of financial support shall be incorporated in the annual budget request submitted by the energy research and development authority and shall be reflected as an offset to recommended appropriations for research, development and demonstration of new energy technologies; provided, however, that the sum of such recommended appropriations and such offset shall not exceed twelve million dollars. One hundred per centum of the costs of such research, development and demonstration not supplemented by bonds, grants or other sources, not to exceed nine million six hundred thousand dollars, shall be apportioned in accordance with the billing procedures of this section, provided, that such costs shall be apportioned among gas corporations and electric corporations as defined in section two of this chapter and shall be excluded from the general assessment provided for under subdivision two of this section. The total amount which may be charged to any gas corporation and electric corporation for any state fiscal year shall be .6 cents per one thousand cubic feet for gas sold and .006 cents per kilowatt hour of electricity sold by such corporations in their intrastate utility operations the last preceding calendar year.

5. On demand made within thirty days of the rendition of any bill pursuant to subdivision two, three or four of this section, the party so charged shall be afforded an opportunity to be heard as to the amount thereof. Any amounts of such bills not paid within thirty days from the date of determination upon such hearings, or, if none shall be demanded, on the date upon which such payment is due, shall bear interest at a rate to be prescribed by regulation of the commission. Such rate shall be not less than six percentum per annum nor more than the rate of interest prescribed by the superintendent of financial services pursuant to the provisions of section fourteen-a of the banking law in effect on the day immediately preceeding² the date on which the provisions of this subdivision as amended become effective, but if the commission has not set such rate, interest at six percentum per annum shall apply. Any interest rate set by the commission shall become effective not less than sixty days after such rate is promulgated.

6. [Expires and deemed repealed March 31, 2017, pursuant to L.2009, c. 59, pt. NN, § 6.] (a) Notwithstanding any provision of law to the contrary, and subject to the exceptions provided for in paragraph (b) of this subdivision, for the state fiscal year beginning on April first, two thousand nine and eight state fiscal years thereafter, a temporary annual assessment (hereinafter "temporary state energy and utility service conservation assessment") is hereby imposed on public utility companies (including for the purposes of this subdivision municipalities other than municipalities as defined in section eighty-nine-1 of this chapter), corporations (including for purposes of this subdivision the Long Island power authority), and persons subject to the commission's regulation (hereinafter such public utility companies, corporations, and persons are referred to collectively as the "utility entities") to encourage the conservation of energy and other resources provided through utility entities, to be assessed in the manner provided in this subdivision; provided, however, that such assessment shall not be imposed upon telephone corporations as defined in subdivision seventeen of section two of this article.

(b) The temporary state energy and utility service conservation assessment shall be based upon the following percentum of the utility entity's gross operating revenues derived from intrastate utility operations in the last preceding calendar year, minus the amount, if any, that such utility entity is assessed pursuant to subdivisions one and two of this section for the corresponding state fiscal year period: (1) two percentum for the state fiscal year beginning April first, two thousand thirteen ; (2) 1.63 percentum for the state fiscal year beginning April first, two thousand fourteen; (3) 1.00 percentum for the state fiscal year beginning April first, two thousand fifteen; and (4) .73 percentum for the state fiscal year beginning April first, two thousand sixteen. With respect to the temporary state energy and utility service conservation assessment to be paid for the state fiscal year beginning April first, two thousand seventeen and notwithstanding clause (i) of paragraph (d) of this subdivision, on or before March tenth, two thousand seventeen, utility entities shall make a payment equal to one-half of the assessment paid by such entities

pursuant to this paragraph for the state fiscal year beginning on April first, two thousand sixteen; provided, further that such assessment for state fiscal year beginning April first, two thousand seventeen shall not be reflected in a customer's rate after December thirty-first, two thousand seventeen. With respect to the Long Island power authority, the temporary state energy and utility service conservation assessment shall be based upon the following percentum of such authority's gross operating revenues derived from intrastate utility operations in the last preceding calendar year, minus the amount, if any, that such authority is assessed pursuant to subdivisions one-a and two of this section for the corresponding state fiscal year period: (1) one percentum for the state fiscal year beginning April first, two thousand thirteen ; (2) .84 percentum for the state fiscal year beginning April first, two thousand fourteen; (3) .50 percentum for the state fiscal year beginning April first, two thousand fifteen; and (4) .34 percentum for the state fiscal year beginning April first, two thousand sixteen; provided, however, that should the amount assessed by the department for costs and expenses pursuant to such subdivisions equal or exceed such authority's temporary state energy and utility service conservation assessment for a particular fiscal year, the amount to be paid under this subdivision by such authority shall be zero. With respect to the temporary state energy and utility service conservation assessment to be paid for the state fiscal year beginning April first, two thousand seventeen and notwithstanding clause (i) of paragraph (d) of this subdivision, on or before March tenth, two thousand seventeen, the Long Island power authority shall make a payment equal to one-half of the assessment it paid for the state fiscal year beginning on April first, two thousand sixteen; provided, further that such assessment for state fiscal year beginning April first, two thousand seventeen shall not be reflected in a customer's rate after December thirty-first, two thousand seventeen. No corporation or person subject to the jurisdiction of the commission only with respect to safety, or the power authority of the state of New York, shall be subject to the temporary state energy and utility service conservation assessment provided for under this subdivision. Utility entities whose gross operating revenues from intrastate utility operations are five hundred thousand dollars or less in the preceding calendar year shall not be subject to the temporary state energy and utility service conservation assessment. The minimum temporary state energy and utility service conservation assessment to be billed to any utility entity whose gross revenues from intrastate utility operations are in excess of five hundred thousand dollars in the preceding calendar year shall be two hundred dollars.

(c) The chairman of the department shall determine, prior to the start of each state fiscal year, the amount of the temporary state energy and utility service conservation assessment for utility entities for the fiscal year. Based on that determination, a bill shall be rendered for each utility entity on or before February first preceding each state fiscal year for the amount as set forth in paragraph (b) of this subdivision.

(d) Each utility entity must pay the bill rendered to it pursuant to paragraph (c) of this subdivision as follows:

(i) The amount of such bill shall be paid by such public utility company to the department on or before April first; provided, however, that a utility company may elect to make partial payments for such costs and expenses on March tenth of the preceding fiscal year and on September tenth of such fiscal year. Each such partial payment shall be a sum equal to fifty percentum of the estimate of costs and expenses to be assessed against such utility company under the provisions of this subdivision and shall not be less than two hundred dollars.

(ii) During the course of any state fiscal year, the chairman may adjust the amount of the bills as appropriate to reflect, among other things, the actual reported revenues. In such case, revised bills shall be sent to each utility entity subject to the provisions of this subdivision, and such increase or decrease shall be equally apportioned against the remaining payments for such fiscal year;

(e) For the purposes of calculating the commodity cost component of its gross operating revenue, where the utility delivers to end-use customers electricity and/or natural gas commodities that are sold to such customers by a third party, such utility shall include in its revenues an estimate of the sales revenue for the electric and/or natural gas commodities that it delivers, including all such commodities sold to end-use customers by third parties, in such manner as to assure that all end-use delivery customers,

regardless of the entity from which they purchase their electric and/or natural gas commodities, bear a fair and proportionate share of the assessment imposed herein, as the commission may determine.

(f) Notwithstanding any provision of law to the contrary, all temporary state energy and utility service conservation assessment monies collected and received by the department shall be deposited to the credit of the comptroller with such responsible banks, banking houses or trust companies as may be designated by the comptroller. Such deposits shall be kept separate and apart from all other monies in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total amount collected, the comptroller shall retain the amount determined by the chairman to be necessary for refund of overpayments out of which the comptroller must pay any refunds to which a utility entity may be entitled pursuant to paragraph (g) of this subdivision. After reserving the amount to pay refunds, the comptroller shall, on or before the tenth day of each month, or more frequently as he or she may deem appropriate, pay all temporary state energy and utility service conservation assessment monies collected and received under this subdivision and remaining to the comptroller's credit into the state general fund.

(g) On or before October tenth of each year, the chairman may compute adjustments or other corrections as needed for the preceding state fiscal year and, shall, on or before October twentieth, send to each utility entity affected thereby, a statement setting forth the amount due and payable by, or the amount standing to the credit of, such utility entity. Any amount owing by any utility entity shall be paid not later than thirty days following the date such statement is received. Any such amount standing to the credit of any utility entity shall be refunded by the chairman.

(h) The chairman is authorized to coordinate the implementation of this subdivision with the other subdivisions of this section, including for purposes of, but not limited to, billing and collection of the assessments provided for under this section.

Credits

(Added L.1934, c. 282. Amended L.1953, c. 214; L.1961, c. 552; L.1972, c. 446, § 2; L.1972, c. 447, § 1; L.1972, c. 448, § 1; L.1973, c. 139, § 2; L.1975, c. 864, § 13; L.1977, c. 531, § 1; L.1978, c. 788, § 42; L.1983, c. 15, §§ 152, 153; L.1983, c. 46, § 1; L.1995, c. 83, § 139; L.2003, c. 62, pt. H1, § 1, eff. May 15, 2003, deemed eff. April 1, 2003; L.2009, c. 59, pt. NN, §§ 1 to 3, eff. April 7, 2009; L.2009, c. 59, pt. NN, § 4, eff. April 7, 2009, deemed eff. April 1, 2009; L.2011, c. 62, pt. A, § 104, eff. Oct. 3, 2011; L.2011, c. 388, § 2, eff. Aug. 4, 2011; L.2013, c. 59, pt. BB, § 1, eff. March 28, 2013, deemed eff. April 1, 2013; L.2013, c. 173, pt. A, § 2, eff. Jan. 1, 2014; L.2014, c. 57, pt. S, § 1, eff. March 31, 2014, deemed eff. April 1, 2014.)

Notes of Decisions (12)

Footnotes

1 So in original ("therefore" should be "therefor").

2 So in original. Probably should be "preceding".

McKinney's Public Service Law § 18-a, NY PUB SERV § 18-a

Current through L.2014, chapters 1 to 431.